

August 5, 2004

AO DRAFT COMMENT PROCEDURES

The Commission has approved a revision in its advisory opinion procedures that permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2004-24 is available for public comments under this procedure. It was requested by Nathaniel Pearlman, on behalf of NGP Software, Inc.

Proposed Advisory Opinion 2004-24 is scheduled to be on the Commission's agenda for its public meeting of Thursday, August 12, 2004.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (Eastern) on August 11, 2004.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2004-24, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

MAILING ADDRESSES

**Commission Secretary
Federal Election Commission
999 E Street NW
Washington, DC 20463**

**Rosemary C. Smith
Associate General Counsel
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463**



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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August 5, 2004

MEMORANDUM

AGENDA ITEM
For Meeting of: 8-12-04

TO: The Commission

THROUGH: James A. Pehrkon *JAP*
Staff Director

FROM: Lawrence H. Norton *LHN*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Brad C. Deutsch *BCD*
Assistant General Counsel

Esa L. Sferra *ELS*
Staff Attorney

Subject: Draft AO 2004-24

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for August 12, 2004.

Attachment

1 **ADVISORY OPINION 2004-24**
2 **Nathaniel Pearlman**
3 **President**
4 **NGP Software, Inc.**
5 **5505 Connecticut Avenue, NW, Suite # 277**
6 **Washington, DC 20015**
7

DRAFT

8 **Dear Mr. Pearlman:**

9 **This responds to your letter dated June 10, 2004, on behalf of NGP Software, Inc.**
10 **("NGP") requesting an advisory opinion concerning the application of the Federal**
11 **Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to**
12 **the use of contributor information from the Commission's online public records in a**
13 **financial software system sold by NGP.**

14 ***Background***

15 **You state that NGP is a for-profit corporation that provides clients with political**
16 **and reporting software, database design, websites, online contribution processing, and**
17 **other consulting services. NGP Campaign Office, one of NGP's software products, is**
18 **"an integrated financial system with fundraising, prospecting, and Federal and State**
19 **campaign finance reporting features." NGP Campaign Office is available as a web-based**
20 **online system or a desktop system.**

21 **You state that NGP would like to "upgrade" NGP Campaign Office to offer its**
22 **clients the ability to access, through a client's NGP Campaign Office system database,**
23 **information about contributions that the client's donors may have made to other**
24 **candidates, PACs, and party organizations. NGP would "obtain donor contribution**
25 **histories from the FEC's online public records for individuals, political committees and**

1 other persons” and integrate this information into a client’s personalized NGP Campaign
2 Office system database.

3 You state that having comparative donor data would “allow NGP’s clients to
4 conduct fundraising more efficiently, and to resolicit existing donors who may have
5 given more to other committees.”

6 ***Question Presented***

7 May NGP sell or include contributor information about individuals, political
8 committees, and other persons obtained from the FEC’s online public records as part of
9 an upgrade to its NGP Campaign Office software product?

10 ***Legal Analysis and Conclusion***

11 The Act provides that the Commission shall make reports and statements filed
12 with it available to the public for inspection and copying within 48 hours after receipt.
13 2 U.S.C. 438(a)(4). However, no information copied from such reports or statements
14 may be sold or used by any person for the purpose of soliciting contributions or for any
15 commercial purpose, other than using the name and address of any political committee to
16 solicit contributions from such committee. 2 U.S.C. 438(a)(4); 11 CFR 104.15(a).

17 Your proposed sale or inclusion of information about contributors (other than
18 information about political committees that are contributors) obtained from the FEC’s
19 public records in NGP Campaign Office would be prohibited under the Act’s restriction
20 on the sale or use of such contributor information. Where the contributors are political
21 committees, the sale or inclusion of information about such contributors obtained from
22 the FEC’s public records is permissible under the Act and Commission regulations.

1 In requiring disclosure of contributor information, Congress provided limitations
2 to ensure that such information was not misused. Congress was concerned that the Act's
3 reporting requirements would "open up all citizens who are generous and public spirited
4 enough to support our political activities to all kinds of harassment" 117 Cong. Rec.
5 30057 (1971) (statement of Senator Bellmon). Senator Bellmon stated that the purpose
6 of the amendment containing the prohibition on use of contributor information was to
7 "protect the privacy of the generally very public-spirited citizens who may make a
8 contribution to a political campaign or a political party." *Id.*

9 As the Commission has explained in previous advisory opinions, the purpose of
10 restricting the sale or use of information obtained from FEC reports is to protect
11 contributors from having their names sold or used for commercial purposes. *See*
12 *Advisory Opinions 1998-4, 1995-5, 1991-16, 1989-19, 1986-25, 1981-38, and 1980-101.*
13 Additionally, in *Advisory Opinion 2003-24*, the Commission reasoned that section
14 438(a)(4) is "a broad prophylactic measure intended to protect the privacy of the
15 contributors about whom information is disclosed in FEC public records."

16 Your proposed inclusion of information about contributors, other than political
17 committees, as a feature of NGP Campaign Office, a commercially available software
18 product, would be prohibited under the Act and Commission regulations. The
19 information about contributors, other than political committees, you seek to include in the
20 upgraded version of NGP Campaign Office, including "contributions . . . made to other
21 candidates, PACs and party organizations," and "contribution histories," would be
22 "obtain[ed] . . . from the FEC's online public records." The inclusion of such
23 information in NGP Campaign Office, whether sold as a separate service or as part of a

1 client's purchase of the NGP Campaign Office upgrade, would be a prohibited use of
2 contributor information obtained from the FEC's public records. Such use is for a
3 commercial purpose because NGP is a for-profit company that sells and services NGP
4 Campaign Office for a profit. Both the Act and the Commission regulations prohibit the
5 use for commercial purposes of such information obtained from FEC reports or
6 statements made available by the Commission for public inspection. 2 U.S.C. 438(a)(4);
7 11 CFR 104.15(a).¹

8 However, the Act and Commission regulations do not restrict the sale or use of
9 the name and address of a political committee for solicitation purposes. 2 U.S.C.
10 438(a)(4); 11 CFR 104.15(a). Additionally, the Commission has allowed the sale or use
11 of more than just the name and address of political committees, and the sale or use of
12 such information for commercial purposes. *See* Advisory Opinions 1989-19 (allowing
13 the commercial sale of unaltered copies of FEC report pages containing contributions
14 from political committees) and 1980-101 (allowing the commercial publication and sale
15 of a directory of comprehensive information concerning political action committees).
16 Accordingly, your proposed inclusion of contributor information about political
17 committees as a feature of NGP Campaign Office would not be prohibited under the Act
18 and Commission regulations.

19 This response constitutes an advisory opinion concerning the application of the
20 Act and Commission regulations to the specific transaction or activity set forth in your
21 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
22 of the facts or assumptions presented and such facts or assumptions are material to a

¹ The Commission notes that this prohibition would not extend to a campaign's ability to resolicit its donors based on its own records of donor contribution histories to that campaign, subject to the Act's contribution limits and restrictions.

1 conclusion presented in this advisory opinion, then the requester may not rely on that
2 conclusion as support for its proposed activity.

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Sincerely,

Bradley A. Smith
Chairman

Enclosures (AOs 2003-24, 1998-4, 1995-5, 1991-16, 1989-19, 1986-25, 1981-38, and
1980-101)